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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,582

06/26/2003

Michael Norman Day

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5112

7590

12/04/2006

Gregory W. Carr
670 Founders Square
900 Jackson Street
Dallas, TX 75202

EXAMINER

UNELUS, ERNEST

ART UNIT

PAPER NUMBER

2181

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,582	Applicant(s) DAY ET AL.	
	Examiner Ernest Unelus	Art Unit 2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-6, 14 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

11/30/2006
FRITZ FLEMING
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group II, claims 7-13 and 15-18 in the reply filed on October 12, 2206 is acknowledged.
2. The instant application having Application No. 10/606,582 has a total of 19 claims. Group I, claims 1-6 and 14 and group III, claim 19 have been withdrawn from consideration and claims 7-13 and 15-18 are now pending in the application; within claims 7-13 and 15-18, there are 10 independent claim and 1 dependent claim, all of which are ready for examination by the examiner.

I. INFORMATION CONCERNING OATH/DECLARATION

Oath/Declaration

1. The applicant's oath/declaration has been reviewed by the examiner and is found to conform to the requirements prescribed in 37 C.F.R. 1.63.

II. INFORMATION CONCERNING DRAWINGS

Drawings

2. The applicant's drawings submitted are acceptable for examination purposes.

III. OBJECTIONS TO THE SPECIFICATION

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3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: -- **method of ascertaining that a count indication returned is within a predetermined range--.**

IV. REJECTIONS NOT BASED ON PRIOR ART

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claims 7 and 15-18** are rejected under 35 U.S.C. 101 because the claimed invention lacks a tangible result. Claims 7 and 15-18 limitation do not disclose what would happen after ‘comparing or ascertaining’ the count returned with a predetermined value. The end result is only to compare or ascertain; no data is transferred as a result thereof.

The claimed invention as a whole must accomplish a practical application. That is, it must produce a “useful, concrete and tangible result.” *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of “real world” value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (*Brenner v. Manson*, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

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5b. Claims 12, 13, 17, and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims disclose a computer program

Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material."

Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable.

Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 7-13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Loo (US pub. 2002/0032796).

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8. As per claim 7, Van Loo discloses “A method of checking to see if unread data has been returned from an external device (see **paragraph 0005**) comprising: issuing a read channel count instruction (see **paragraph 0006**); and comparing the count returned with a predetermined value to ascertain if a read register contains unread data (see **paragraphs 0066, which discloses a counter to compare a counted value with a predetermined (full) value. According to the claim language, an external device can be anything, which in this case would be a master, the transmitter, and an unread data is a data received by the queue that has not been processed**).

9. As per claim 8, Van Loo discloses “A method of ascertaining if there is previously unread data in a read channel, comprising: issuing a read channel count instruction (see **paragraph 0006**); and retrieving data in the read channel when the count returned is a predetermined value (see **paragraphs 0065**).

10. As per claim 9, Van Loo discloses “The method of claim 8,” [See rejection to claim 8 above] “wherein the channel being read is an accumulating channel (see **paragraph 0065**), comprising: retrieving all the data stored in the read channel when the channel is read (see **paragraph 0067**); and resetting a channel counter associated with said read channel to a predetermined value each time the channel is read (see **paragraph 0067, which discloses decrementing the counter for each input request**).

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11. As per **claim 10**, Van Loo discloses “A method of ascertaining the existence of data in a read channel that has not been previously read (**see paragraph 0067**), comprising: sending a channel count read instruction to a read channel counter (**see paragraph 0067**); and reading the data in that channel if the count returned is within a given range of counts (**see paragraph 0067**).

12. As per **claim 11**, Van Loo discloses “A method of ascertaining that an external device has not read data in a write channel (**see paragraph 0005**), comprising: sending a channel count read instruction to a write channel counter (**see paragraph 0067**); and writing further data to that channel only if the count returned is within a given range of counts (**see paragraph 0067**).

13. As per **claim 12**, Van Loo discloses “A computer program product for ascertaining that an external device has not read data in a write channel (**see paragraph 0067**), the computer program product having a medium with a computer program embodied thereon (**see paragraph 0052**), the computer program comprising: computer code for sending a channel count read instruction to a write channel counter (**see paragraph 0067**); and computer code for writing further data to that channel only if the count returned is within a given range of counts (**see paragraph 0067**).

14. As per **claim 13**, Van Loo discloses “ A computer program product for ascertaining the existence of data in a read channel that has not been previously read (**see paragraph 0067**), the computer program product having a medium with a computer program embodied thereon (**see paragraph 0052**), the computer program comprising: computer code for sending a channel

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count read instruction to a read channel counter (see **paragraph 0067**); and computer code for reading the data in that channel if the count returned is within a given range of counts (see **paragraph 0052**).

15. As per **claim 15**, Van Loo discloses “A method of sending data to an external device (see **fig. 2 and paragraph 0067**); comprising: sending data to a write channel via a write channel instruction (see **paragraph 0006**); sending a channel count read instruction to a counter associated with said write channel (see **paragraph 0067**); and ascertaining that a count indication returned is within a predetermined range of values before sending more data to said write channel (see **paragraph 0067**).

16. As per **claim 16**, Van Loo discloses “A method of receiving data from an external device, comprising (see **fig. 2 and paragraph 0067**): retrieving data from a read channel via a read channel instruction (see **paragraph 0006**); sending a channel count read instruction to a counter associated with said read channel (see **paragraph 0006**); and ascertaining that a count indication returned is within a predetermined range of values before attempting to retrieve more data from said read channel (see **paragraph 0006**).

17. As per **claim 17**, Van Loo discloses “A computer program product for sending data to an external device (see **paragraph 0067**), the computer program product having a medium with a computer program embodied thereon (see **CPU in paragraph 0023**), the computer program comprising: computer code for sending data to a write channel via a write channel instruction

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(see **paragraph 0006**); computer code for sending a channel count read instruction to a counter associated with said write channel (see **paragraph 0067**); and computer code for ascertaining that a count indication returned is within a predetermined range of values before sending more data to said write channel (see **paragraph 0006**).

18. As per **claim 18**, Van Loo discloses “A computer program product for receiving data from an external device (see **paragraph 0067**), the computer program product having a medium with a computer program embodied thereon (see **CPU in paragraph 0023**), the computer program comprising: computer code for retrieving data from a read channel via a read channel instruction (see **paragraph 0067**); computer code for sending a channel count read instruction to a counter associated with said read channel (see **paragraph 0067**); and computer code for ascertaining that a count indication returned is within a predetermined range of values before attempting to retrieve more data from said read channel (see **paragraph 0006**).

V. RELEVANT ART CITED BY THE EXAMINER

19. The following prior art made of record and not relied upon is cited to establish the level of skill in the applicant's art and those arts considered reasonably pertinent to applicant's disclosure. See **MPEP 707.05(c)**.

The following reference teaches execution of a method of ascertaining that a count indication returned is within a predetermined range.

U.S. PATENT NUMBER

US 2002/0174294

VI. CLOSING COMMENTS

Conclusion

a. STATUS OF CLAIMS IN THE APPLICATION

20. The following is a summary of the treatment and status of all claims in the application as recommended by M.P.E.P. 707.07(i):

a(1) CLAIMS REJECTED IN THE APPLICATION

21. Per the instant office action, claims 7-13 and 15-18 have received a first action on the merits and are subject of a first action non-final.

b. DIRECTION OF FUTURE CORRESPONDENCES

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernest Unelus whose telephone number is (571) 272-8596. The examiner can normally be reached on Monday to Friday 9:00 AM to 5:00 PM.

IMPORTANT NOTE

23. If attempts to reach the above noted Examiner by telephone is unsuccessful, the Examiner's supervisor, Mr. Fritz M. Fleming, can be reached at the following telephone number: Area Code (571) 272-4145.


The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 28, 2006

Ernest Unelus
Examiner
Art Unit 2181


FRITZ FLEMING
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100
11/30/2006